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7

8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 SILVERTIP PARTNERS, LLC, a Delaware  
11 Limited Liability Company,  
12 Plaintiff,  
13 vs.  
14 Luxemont, LLC, a California Limited  
15 Liability Company, and Does 1-10, Inclusive  
16 Defendants.  
17

Docket No.

**'14CV2010 BTM DHB**

**COMPLAINT**

**JURY TRIAL DEMANDED**

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19  
20  
21 SILVERTIP PARTNERS, LLC (herein after "Plaintiff"), by and through its  
22 undersigned counsel, for its Complaint against Defendant LUXEMONT, LLC, and  
23 Does 1-10, inclusive (collectively "Defendants") states and alleges as follows.

24 **INTRODUCTION**  
25

26 1. Plaintiff provides photojournalism goods and services and owns the rights to a  
27 multitude of high quality photographs, which it licenses to online and print  
28 publications. Plaintiff has obtained copyright registrations covering these photographs.

1       2. Defendants own and operate a website known as www.justluxe.com (the  
2 “Website”) and without permission or authorization from Plaintiff, copied, modified,  
3 stored and displayed Plaintiff’s photograph on the Website and Defendant’s server and  
4 engaged in this misconduct knowingly and in violation of the United States copyright  
5 laws, among others.

6  
7                                   **JURISDICTION AND VENUE**

8       3. This Court has original and exclusive subject matter jurisdiction of this action  
9 pursuant to 28 U.S.C. §§1331 and 1338(a) and (b), in that the case arises out of claims  
10 for copyright infringement under 17 U.S.C. §501(a); and this Court has supplemental  
11 jurisdiction pursuant to 28 U.S.C. §1367(a) in that the state claims are so related to the  
12 claims over which the court has original jurisdiction that they form part for the same  
13 case or controversy.

14       4. This venue is proper, *inter alia*, pursuant to 28 U.S.C. §1391(b) because on  
15 information and belief, a substantial part of the events or omissions giving rise to the  
16 claim occurred in this judicial district, and have caused damages to Plaintiff in this  
17 jurisdiction.

18  
19       5. Personal jurisdiction exists over Defendants because on information and belief,  
20 Defendants conduct business in California and in this judicial district, have  
21 purposefully directed action to California and this district, or have otherwise availed  
22 themselves of the privileges and protections of the laws of the State of California, such  
23 that this Court’s assertion of jurisdiction over Defendants does not offend traditional  
24 notions of fair play and due process.

25                                   **PARTIES**

26  
27       6. Plaintiff, is now, and was at the time of the events giving rise to this Complaint  
28 and at all intervening times, a California Limited Liability Company, duly authorized

1 and licensed to conduct business in California, with its principal place of business in  
2 California.

3 7. Plaintiff is informed and believes that Defendant, is a California Limited  
4 Liability Corporation, with a business address of 501 West Broadway Plaza, Suite A  
5 #321, San Diego, CA 92101.

6 8. The true names and capacities, whether individual, corporate, associate or  
7 otherwise, of Defendants herein named as Does 1-10, inclusive, are unknown to  
8 Plaintiff. When the true names and capacities of said Defendants have been  
9 ascertained, Plaintiff will amend this pleading accordingly.

10 9. Plaintiff further alleges that Defendants, and Does 1-10, inclusive, sued herein  
11 by fictitious names are jointly, severally and concurrently liable and responsible with  
12 the named Defendants upon the causes of action herein after set forth.

13 10. Plaintiff is informed and believes and thereon alleges that at all times  
14 mentioned herein, Defendants, and Does 1-10, inclusive, and each of them, were the  
15 agents, servants and employees of every other Defendant and the acts of each  
16 Defendant, as alleged herein, were performed within the course and scope of that  
17 agency, service or employment.  
18

19 **FACTUAL ALLEGATIONS**  
20

21 11. Since 2009, Plaintiff's photographer, Kevin Pack, and Cal Fire have maintained  
22 a relationship whereby Mr. Pack is contacted by Cal Fire to take high quality photos of  
23 air tankers, helicopters, OV-10's, firefighters, and fire crews working specific high-  
24 profile fire incidents. Mr. Pack is not a state employee and provides his images to Cal-  
25 Fire on a voluntary basis. These jobs are dangerous and Plaintiff has made significant  
26 investments both in time and money to maintain this relationship.

27 12. As a result, Plaintiff is the legal and beneficial owner of a multitude of  
28 photographs which it licenses to online/print publications and has invested significant

1 time and money in building its photograph portfolio.

2 13. Plaintiff has obtained several active and valid copyright registrations with the  
3 United States Copyright Office, which cover many of its photographs.

4 14. In August 2012, Plaintiff timely registered its copyright to a specifically  
5 valuable image: U.S. Registration No. VA 1-835-659 ("Plaintiff's Image", attached  
6 hereto as Exhibit A). To obtain this photograph, Mr. Pack incurred high travel costs,  
7 spent five days photographing the fire, had added insurance costs, and even risked his  
8 life.

9 15. Plaintiff's photographs are original, creative works in which Plaintiff owns  
10 protectable copyright interests.

11 16. Defendants are the registered owners of the Website and are responsible for its  
12 content.

13 17. On January 30, 2013, Plaintiff discovered that Defendants were using  
14 Plaintiff's Image without permission. By information and belief the image was stored  
15 and contained on Defendant's server and addressed to Defendant's own website from  
16 which they license content for a fee. This was especially disturbing because  
17 Defendants also claimed ownership of Plaintiff's Image and gave viewers permission  
18 to download it naming the Defendants as provider/owner of Plaintiff's Image.  
19

20 18. Plaintiff immediately notified Defendants through their listed method of  
21 contact that they were infringing his copyright. In this communication, Plaintiff gave  
22 Defendants the option to either enter into a license agreement or immediately remove  
23 the Image from their website. Defendants never responded.

24 19. Plaintiff again notified Defendants in February 2013 of the use without  
25 permission and from February to the present day, Defendants ignored at least eighteen  
26 (18) different attempts to resolve this matter out of Court, most of which were sent via  
27 email and certified mail.

28 20. When Defendants posted Plaintiff's image, they cropped it so as to remove the

1 photo credits to Mr. Pack and included their own copyright notice.

2 21. Defendants' Website is monetized in that it contains paid advertisements  
3 and/or sells merchandise and content to the public and, on information and belief,  
4 Defendants profit from these activities.

5 22. Without permission or authorization from Plaintiff, Defendants copied,  
6 modified, stored on Defendant's server, offered to disseminate and/or displayed  
7 Plaintiff's Image on the Defendants Website (hereinafter "the Infringement").

8 23. On information and belief, Plaintiff's Image was copied and stored on  
9 Defendant's server without license or permission, thereby infringing on the Copyright  
10 Plaintiff owns.

11 24. On information and belief, Defendants were aware of the facts or  
12 circumstances from which the determination regarding the Infringement was apparent.  
13 Based on the totality of the circumstances, Defendants cannot claim that they were not  
14 aware of the infringing activities, including the specific Infringement which forms the  
15 basis of this complaint, on the Website since such a claim would amount to only  
16 willful blindness to the Infringement on the part of Defendants.

17 25. On information and belief, Defendants engaged in the Infringement knowingly  
18 and in violation of applicable United States Copyright Laws.

19 26. Additionally, on information and belief, with "red flag" knowledge of the  
20 Infringement Defendants failed to promptly remove the image. (*See 17 U.S.C.*  
21 *§512(c)(1)(A)(i)*).

22 27. As a result of Defendants' misconduct, Plaintiff has been substantially harmed.

23 **FIRST COUNT**

24 ***(Direct Copyright Infringement - 17 U.S.C. §501 et seq.)***

25 28. Plaintiff repeats and incorporates by reference the allegations contained in the  
26 preceding paragraphs, as though set forth in full herein.  
27  
28

1 29. Plaintiff's Image is an original, creative work in which Plaintiff owns  
2 protectable copyright interests.

3 30. Plaintiff had not licensed Defendants the right to use or store Plaintiff's Image  
4 in any manner, nor has Plaintiff assigned any of its exclusive rights in the Copyright to  
5 Defendant.

6 31. Without permission or authorization from Plaintiff and in willful violation of  
7 its rights under 17 U.S.C. §106, Defendants improperly and illegally copied,  
8 reproduced, distributed, and/or publicly displayed Plaintiff's Image.

9 32. Defendants' reproduction of the Photograph and display as well as the offer to  
10 distribute Plaintiff's Image on the Website constitutes willful copyright infringement.

11 33. On information and belief, thousands of people have viewed the unlawful  
12 copies of the Photograph on the Website.

13 34. On information and belief, Defendants had knowledge of the copyright  
14 infringement alleged herein and had the ability to stop the reproduction, display or  
15 offer to use Plaintiff's copyrighted material.

16 35. As a direct and proximate result of Defendants' misconduct, Plaintiff has been  
17 substantially harmed in an amount to be proven at trial.  
18

19 **SECOND COUNT**

20 ***(Vicarious Copyright Infringement)***

21 36. Plaintiff repeats and incorporates by reference the allegations contained in the  
22 preceding paragraphs, as though set forth in full herein.

23 37. Defendants enjoyed direct financial benefit from the infringing activity of its  
24 users and declined to exercise the right and ability to supervise or control that  
25 infringing activity, despite their legal right to stop or limit the directly infringing  
26 conduct as well as the practical ability to do so.  
27  
28



38. Accordingly, Defendants are liable as vicarious infringers since they profited from direct infringement while declining to exercise a right to stop or limit it. (*See, e.g., Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1171 [9<sup>th</sup> Cir. 2007]; *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 929-30 [2005])

39. As a result of Defendants' misconduct, Plaintiff has been substantially harmed in an amount to be proven at trial.

### **THIRD COUNT**

#### ***(Inducement of Copyright Infringement)***

40. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

41. Individuals using the Website that Defendants' created, distributed and promoted, have been provided with the means and mechanisms through the Website to directly infringe Plaintiff's copyright, for example creating unauthorized reproductions of Plaintiff's copyrighted works and distributing copies of such works in violation of Plaintiff's exclusive rights (*17 U.S.C. §§1069 and 501*).

42. Defendants have induced and provided the means to induce infringement by, for example, providing technology on the Website to download and/or forward an image to such social media providers as Facebook, Instagram, and Twitter as well as others, all who make the claim to commercially use the image posted to their respective sites, as well as providing the image to other unlicensed outlets via an RSS feed and naming the Defendant as owner of the image and/or failing to block or diminish access to the infringed material even though there are technological means to do so that are known to Defendants.

43. Defendants' infringement is and has been willful, intentional, purposeful, and in disregard to the rights of the Plaintiff, and has caused substantial damage to the Plaintiff.

1 44. As a direct and proximate result of Defendants' misconduct, Plaintiff has been  
2 substantially harmed in an amount to be proven at trial.

3 **FOURTH COUNT**

4 ***(Violation of the Digital Millennium Copyright Act - 17 U.S.C. §§1202(a) & (b)***

5 45. Plaintiff repeats and incorporates by reference the allegations contained in the  
6 preceding paragraphs, as though set forth in full herein.

7 46. When illegally publishing Plaintiff's Image on the Website and storing  
8 Plaintiff's Image, Defendants removed Plaintiff's copyright management information  
9 in violation of 17 U.S.C. §1202(b).

10 47. On the Website and on Plaintiff's Image stored on Defendants server,  
11 Defendants claimed ownership of Plaintiff's Image. Providing copyright management  
12 information that is false and distributing copyright management that is false in  
13 violation of 17 U.S.C. §1202(a).

14 48. As a direct and proximate result of Defendants' misconduct, Plaintiff has been  
15 substantially harmed in an amount to be proven at trial.

16  
17 **FIFTH COUNT**

18 ***(Unlawful Business Practices California Business Professions Code §17200 et. seq.)***

19 49. Plaintiff repeats and incorporates by reference the allegations contained in the  
20 preceding paragraphs, as though set forth in full herein.

21 50. Defendants wrongful and unlawful use, post, display and/or dissemination of  
22 Plaintiff's copyrighted work, and/or forgeries thereof, constitutes an unlawful business  
23 practice in violation of, among other things, California Business and Professions Code  
24 §§17200 through 17203.

25 51. Plaintiff is the sole owner of all right, title and interest in Plaintiff's Image.  
26 Defendants' use, display, storage and dissemination of this image is unauthorized,  
27 unfair and unlawful. Defendants' use, display, storage and dissemination of Plaintiff's  
28



1 Image on the Website constitutes infringement of Plaintiff's rights. California's Unfair  
2 Competition Law ("UCL") permits civil recovery and injunctive relief for "any  
3 unlawful, unfair or fraudulent business act or practice," including if a practice or act  
4 violates or is considered unlawful under any other State, Federal or foreign law.

5 52. Defendants' marketing, advertising, promoting, selling and/or otherwise  
6 dealing in the counterfeit work is in violation and derogation of Plaintiff's rights and is  
7 likely to cause confusion, mistake and deception among consumers and the public as to  
8 the source, origin, sponsorship, ownership or quality of the goods, thereby causing  
9 loss, damage and injury to Plaintiff and to the purchasing price.

10 53. Defendants knew or by the exercise of reasonable care should have known that  
11 their marketing, advertising, promoting, selling and/or otherwise dealing in and their  
12 continuing to market, advertise, promote, selling and/or otherwise dealing in the  
13 counterfeit work would cause confusion mistake or deception among purchasers, users  
14 and the public.

15 54. As a direct and proximate result, Defendants' wrongful conduct, as alleged  
16 herein, Plaintiff has and will be deprived of substantial sales of its products in an  
17 amount as yet unknown but to be determined at trial, and has been and will be deprived  
18 of the value of its marks as commercial assets, in an amount as yet unknown to but be  
19 determined at trial.

20 55. Plaintiff seeks restitution in this matter, including an order granting  
21 Defendants' profits stemming from its infringing activity, and its actual and/or  
22 compensatory damages.  
23

## 24 **SIXTH COUNT**

### 25 ***(Attorney Fees and Costs Pursuant to 17 U.S.C. §505)***

26 56. Plaintiff repeats and incorporates by reference the allegations contained in the  
27 preceding paragraphs, as though set forth in full herein.  
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1        57. Plaintiff requests, pursuant to 17 U.S.C. §505, its attorney fees and costs for the  
2 prosecution of this action.

3  
4        **WHEREFORE**, Plaintiff SILVERTIP PARTNERS, LLC, prays for judgment  
5 against Defendants LUXEMONT, LLC, and Does 1-10, inclusive, and each of them,  
6 as follows:

- 7        A. Statutory damages against Defendants pursuant to 17 U.S.C. §504(c) of  
8        \$150,000 per infringement or in the alternative Plaintiff's actual damages and  
9        the disgorgement of Defendants' wrongful profits in an amount to be proven at  
10       trial; and  
11       B. For an award of damages against the Defendant pursuant to 17 U.S.C. §1202 in  
12       the amount of \$20,000 or to be determined by the Court, in addition to any fines  
13       for copyright infringement;  
14       C. For an award of damages against the Defendants pursuant to 17 U.S.C. §1201 in  
15       the amount of \$2,500 or to be determined by the Court, in addition to any fines  
16       for copyright infringement, and  
17       D. For restitution in an amount to be proven at trial for unfair, fraudulent and illegal  
18       business practices under *Business and Professions Code* §17200 *et seq.*; and  
19       E. For damages to be proven at trial for common law unfair competition; and  
20       F. For an order from the Court requiring that Defendants provide a complete  
21       accounting and for equitable relief, including that Defendants disgorge and  
22       return or pay their ill-gotten gains obtained from the illegal transactions entered  
23       into and/or pay restitution, including the amount of monies that should have  
24       been paid if Defendants' complied with their legal obligations, or as equity  
25       requires; and  
26  
27  
28

- 1 G. For an order from the Court that an asset freeze or constructive trust be imposed  
2 over all monies and profits in Defendants' possession which rightfully belongs  
3 to Plaintiff; and  
4 H. For the appropriate penalties based on the willful violation of 17 U.S.C. §§1201-  
5 1202 for the purposes of commercial advantage and/or private financial gain in  
6 an amount to be determined by the Court; and For damages in an amount to be  
7 proven at trial for unjust enrichment; and  
8 I. For an award of exemplary or punitive damages in an amount to be determined  
9 by the Court; and  
10 J. Plaintiff's attorneys' fees pursuant to 17 U.S.C. §505; and  
11 K. Plaintiffs' costs; and  
12 L. For such other relief as the Court may deem just and equitable.  
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16 **DEMAND FOR JURY TRIAL**

17 Plaintiff, SILVERTIP PARTNERS, LLC, respectfully demands a trial by jury in  
18 this action.  
19

20 THE HADDACH LAW OFFICE

21  
22 Dated: August 26, 2014

By: Aubrey Haddach

23 Aubrey A. Haddach, Esq.  
24 Attorney for Plaintiff  
25 SILVERTIP PARTNERS, LLC  
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